AND
RIEFS

Nos. 16-1436 and 16-1540

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Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

—v.—

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

—v.—

HAWAII, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURTS OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

BRIEF OF EPISCOPAL BISHOPS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae[1] are the Rt. Rev. Gladstone B. Adams III, Bishop Provisional of South Carolina; the Rt. Rev. Laura J. Ahrens, Bishop of Connecticut; the Rt. Rev. Barry Beisner, Bishop of Northern California; the Rt. Rev. Patrick Bell, Bishop of Eastern Oregon; the Rt. Rev. Scott A. Benhase, Bishop of Georgia; the Rt. Rev. Joe Burnett, Bishop of Nebraska, Resigned; the Rt. Rev. Tom Breidenthal, Bishop of Southern Ohio; the Rt. Rev. Bud Cederholm, Suffragan Bishop of Massachusetts, Retired; the Rt. Rev. John Bryson Chane, Assisting Bishop of San Diego; the Rt. Rev. Joe Doss, Bishop of New Jersey, Attorney-at-Law, Retired; the Rt Rev. Ian T. Douglas, Bishop of Connecticut; the Rt. Rev. Thomas C. Ely, Bishop of Vermont; the Rt. Rev. Doug Fisher, Bishop of Eastern Massachusetts; the Rt. Rev. Robert L. Fitzpatrick, Bishop of Hawai'i and the Episcopal Church in Micronesia; the Rt. Rev. J. Michael Garrison, Bishop of Western New York, Resigned; the Rt. Rev. Susan E. Goff, Bishop Suffragan of Virginia; the Rt. Rev. Edwin F. Gulick, Assistant Bishop Of Virginia; the Rt. Rev. Dena Harrison, Suffragan Bishop of Texas; the Rt. Rev. Scott Hayashi,

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel, party, or person other than the amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties consented to the filing of this brief.

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Bishop of Utah; the Rt. Rev. Dorsey Henderson, Bishop of Upper South Carolina, Resigned, Assisting in Florida; the Rt. Rev. A. Robert Hirschfeld, Bishop of New Hampshire; the Rt. Rev. Whayne M. Hougland, Jr., Bishop of Western Michigan; the Rt. Rev. Shannon S. Johnston, Bishop of Virginia; the Rt. Rev. David Colin Jones, Bishop Suffragan of Virginia, Retired; the Rt. Rev. Stephen Lane, Bishop of Maine; Rt. Rev. Ed Leidel, Jr., Bishop of Eastern Michigan, Retired; Rt. Rev. Dorsey W. M. McConnell, Bishop of Pittsburgh; the Rt. Rev. Jack M. McKelvey, Bishop of Rochester, Retired; Rt. Rev. Robert O'Neill, Bishop of Colorado; the Rt. Rev. Brian N. Prior, Bishop of the Episcopal Church in Minnesota; the Rt. Rev. David Rice, Bishop of San Joaquin; the Rt. Rev. Gregory H. Rickel, Bishop of Olympia; the Rt. Rev. V. Gene Robinson, Bishop of New Hampshire, Retired; the Rt. Rev. Mark S. Sisk, Bishop of New York, Retired; the Rt. Rev. Cabell Tennis, Bishop of Delaware, Resigned; the Rt. Rev. Brian Thom, Bishop of Idaho; the Rt. Rev. John S. Thornton, Bishop of Idaho, Resigned; and the Rt. Rev. Geralyn Wolfe, Bishop of Rhode Island, Retired, Assisting Long Island (collectively, the "Bishops").

The Episcopal Church is organized into 111 geographic dioceses, which include more than 7,000 congregations. Each Bishop, whose authority in his or her diocese is both sacramental and constitutional within the Episcopal Church, governs the diocese, together with local representative bodies.

Among the central tenets of the Episcopal Church are to welcome and assist strangers, especially those who are poor, sick, and most in need of help, to provide a safe haven for those seeking freedom from oppression, and to uphold the dignity of every human being. To those ends, the Church has an active global missionary program and a refugee resettlement program in the United States, together known as the Episcopal Migration Ministries ("EMM").

Since 1988, EMM and its network of affiliate partners have aided and welcomed more than 50,000 refugees into the United States. In 2016, EMM helped more than 5,700 refugees from 35 countries build new lives, in peace and security, in 30 communities across the United States. EMM collaborates with local partner agencies in 27 Episcopal dioceses and 23 states to welcome those fleeing persecution. Helping these families is one way Episcopalians honor their baptismal covenant with God.

EMM is one of nine organizations contracted with the federal government to resettle refugees. After "extensive vetting . . . , vetting far more thorough and extreme than faced by any other group or individual," EMM formally assures each refugee's sponsorship, cementing the relationship and the organization's commitment to the

refugee.[2] Due to the reduced number of refugees to be resettled under Section 6(b) of Executive Order 13,780 (the "Executive Order"), EMM will reduce its 31-member affiliate network by six in the 2018 fiscal year.[3] "The planned closings are a painful but strategically necessary move . . . for the health of the overall network and for the well-being of the refugees."[4]

The Bishops earnestly believe that the Executive Order impedes the ability of Episcopalians to practice their faith and keep their baptismal covenant with God. As leaders in the Episcopal Church, as members of the broader faith community, and as active providers of refugee resettlement services, the Bishops have a deep interest in preserving this country's special status as a safe haven for refugees and in protecting the fundamental principle of religious tolerance embedded in our Constitution. The Bishops urge the Court to affirm the rulings of the courts of appeals.

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[2] The Rev'd Canon E. Mark Stevenson, *A Response to the Administration's Decision on Relationships* (June 30, 2017), https://episcopalmigrationministries.org/statement-episcopal-migration-ministries-2.

[3] Mary Frances Schjonberg, *Trump's immigration policies force reduction of Episcopal Church's refugee resettlement network* (April 4, 2017), http://episcopaldigitalnetwork.com/ens/2017/04/04/trumps-immigration-policies-force-reduction-of-episcopal-churchs-refugee-resettlement-network.

[4] *Id.*

II. INTRODUCTION AND SUMMARY OF THE ARGUMENT

From its earliest inception, America has been a safe haven for victims of religious oppression, in part because religious tolerance is a value enshrined in our Constitution through the Establishment Clause. The Executive Order contradicts those values and undermines the United States' longstanding status as a place of refuge for the world's most vulnerable populations. The Executive Order has slammed the door on people who have suffered some of the greatest atrocities in recent times, and it does this solely based on their religion.

From the beginning of his presidential campaign, President Donald J. Trump has called for a "total and complete shutdown of Muslims entering the United States."[5] One week after he took office, the President made good on his threat by issuing an executive order banning everyone but religious minorities from seven majority-Muslim countries (the "Original Executive Order").[6] In the weeks that followed, the President

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[5] Donald J. Trump, *Statement on Preventing Muslim Immigration* (December 7, 2015), www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration.

[6] *See* Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

and his senior advisors confirmed this was his long-promised "Muslim ban."[7]

When it became clear that the Original Executive Order would not pass constitutional muster, the President and his senior advisors revised its text, removed Iraq from the list, and issued it as a new executive order.[8] Despite the Administration's textual gymnastics, the President stood by his Muslim "travel ban,"

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[7] *E.g.*, *Full Transcript: President Donald Trump's News Conference*, CNN, Feb. 16, 2017, http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript; Rebecca Shabad, *Donald Trump says he's expanding his Muslim ban*, CBS News (July 24, 2016), http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban; Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans'*, Time (Dec. 21, 2016), http://time.com/4611229/donald-trump-berlin-attack; Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says — and ordered a commission to do it 'legally'*, The Washington Post (Jan. 29, 2017), http://wpo.st/xzuY2.

[8] *See* Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,780, 82 Fed. Reg. 13210-11 (Mar. 6, 2017).

issuing numerous statements that revealed his true motivation.[9]

Appellants argue that statements made before a president assumes office—"before he [takes] the prescribed oath to 'preserve, protect and defend the Constitution'"— "cannot bind elected officials who later conclude that a different course is warranted."[10] This argument is immaterial, however, because President Trump has made numerous, official, post-inaugural statements

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[9] *See infra* notes 12-14; *see also* Donald J. Trump, @realDonaldTrump, Twitter (June 4, 2017, 4:19 AM EST), https://twitter.com/realdonaldtrump/status/871325606901895168?lang=en ("We must stop being politically correct and get down to the business of security for our people. If we don't get smart it will only get worse[.]"); Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:44 AM EST), https://twitter.com/realdonaldtrump/status/871679061847879682?lang=en ("In any event we are EXTREME VETTING people coming into the U.S. in order to help keep our country safe. The courts are slow and political!"); Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017 6:20 AM EST), https://twitter.com/realdonaldtrump/status/871899511525961728?lang=en ("That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!"); Donald J. Trump, @realDonaldTrump, Twitter (June 13, 2017, 3:44 AM EST), https://twitter.com/realdonaldtrump/status/874578159676665857?lang=en ("Well, as predicted, the 9th Circuit did it again - Ruled against the TRAVEL BAN at such a dangerous time in the history of our country. S.C.").

[10] Brief for Petitioners at *73, *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436, 16-1540, 137 S. Ct. 2080 (Aug. 10, 2017).

revealing that the Executive Order's true intent is to accomplish exactly what Candidate Trump said he would do as president. Rather than support the revised order and the "different course" that he had allegedly charted, the President took to Twitter to blame the Department of Justice for "watering down" his "travel ban":

> People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN![11]
>
> The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.[12]
>
> The Justice Dept. should ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version![13]

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[11] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:25 AM EST), https://twitter.com/realdonaldtrump/status/871674214356484096?lang=en.

[12] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:29 AM EST), https://twitter.com/realdonaldtrump/status/871675245043888128?lang=en.

[13] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:37 AM EST), https://twitter.com/realdonaldtrump/status/871677472202477568?lang=en.

Faced with voluminous evidence showing the President's true, discriminatory ambition, Appellants argue that it is not the Court's prerogative to "prob[e] government officials' subjective intentions . . . ."[14] They want this Court "to ignore perfectly probative evidence; they want an absentminded objective observer, not one presumed to be familiar with the history of the [President's] actions and competent to learn what history has to show."[15]

"But the world is not made brand new every morning" and this Court's "precedents sensibly forbid an observer to turn a blind eye to the context in which this policy arose."[16] The President and his senior advisors have been clear in fundraising e-mails,[17] statements to the press,[18] and social

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[14] Brief for Petitioners at *64, *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436, 16-1540, 137 S. Ct. 2080.

[15] *McCreary Cnty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005).

[16] *Id.* at 866.

[17] M. Zapotosky, D. Nakamura, & A. Hauslohner, *Revised Executive Order Bans Travelers from Six Muslim-Majority Countries from Getting New Visas*, The Washington Post (Mar. 6, 2017), www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/ 3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.1f6730369a62.

[18] *Press Briefing by Secretary Sean Spicer, No. 18*, The White House (Mar. 7, 2017), www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18.

media messaging that the revised Executive Order has the same intent as the original—the implementation of the President's desired "total and complete shutdown of Muslims entering the United States."[19]

As found by the Fourth Circuit, the context and history of the Executive Order, including the President's consistent statements before and after his election, show that the primary purpose behind the Executive Order is religious animus.[20] Other amici curiae, including Americans United for Separation of Church and State, Oxfam, and the Interfaith Coalition, have thoughtfully explained how the Executive Order violates the Establishment Clause. The Bishops submit the following historical background and context of the Establishment Clause for the Court's benefit.

III. ARGUMENT

A. The First Amendment Establishment Clause Enshrines America's Longstanding Role as a Safe Haven for Refugees Fleeing Religious Oppression.

The Founders adopted the Establishment Clause in part to enshrine America's role as a safe

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[19] Trump, *supra* note 5.

[20] *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 597 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080, (June 26, 2017).

haven for victims of religious oppression and to guard against precisely the sectarianism that motivates the Executive Order. "A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government favored churches."[21] They came here to avoid "turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy."[22] But as life in the Colonies developed, the formerly persecuted became persecutors—often repeating "many of the old world practices and persecutions" they had escaped.[23]

> It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.[24]

Virginia's early code of laws imposed fines, whippings, or months in the gallows for failure to

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[21] *Everson v. Bd. of Educ. of Ewing Tp.*, 330 U.S. 1, 8 (1947).
[22] *Id.* at 8-9.
[23] *Id.* at 10.
[24] *Engel v. Vitale*, 370 U.S. 421, 427 (1962).

attend church twice daily.[25] The early Jews arriving in Maryland from Brazil were denied citizenship, the right to worship, and the right to operate public businesses.[26] In Puritan New England, religious minorities were punished with whippings, ear croppings, and even hangings.[27] "These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence. . . . It was these feelings which found expression in the First Amendment."[28]

The movement towards the Establishment Clause began in earnest in 1785 with a proposal to renew Virginia's tax levy for the support of the established Church of England.[29] In opposition to the proposal, James Madison wrote *Memorial and Remonstrance*, in which he argued that renewing the levy for support of the Church was "a dangerous abuse of power . . . ."[30] Madison cautioned that renewing the religious tax would be "a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised

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[25] PATRICIA U. BONOMI, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 36 (2003).

[26] *Id.* at 43.

[27] *Id.* at 44.

[28] *Everson*, 330 U.S. at 11.

[29] *See id.*

[30] James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html.

a lustre to our country, and an accession to the number of its citizens."[31] He specifically warned that victims of oppression abroad would look elsewhere for refuge if America fell into the trap of establishing a national religion and penalizing those who do not adhere to it:

> What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthrophy [sic] in their due extent, may offer a more certain repose from his Troubles.[32]

Madison's warnings proved extremely effective. Not only was the bill defeated, but the Virginia Assembly enacted Thomas Jefferson's "Virginia Bill for Religious Liberty."[33] Madison's work and ideas spread beyond Virginia and several other

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[31] *Id.* at ¶ 9.

[32] *Id.* (emphasis added).

[33] *Everson*, 330 U.S. at 12.

colonies considered similar legislation at the time.[34] This movement led to the inclusion of the Establishment Clause in the First Amendment.[35] This is the place in our Constitution that preserves the United States' special role as a beacon of hope and a refuge for the oppressed.

B. The Executive Order Undermines the United States' Role as a Safe Haven for Refugees Fleeing Oppression.

Beyond violating the letter of the Establishment Clause, both Executive Orders have caused the very harms James Madison identified in his *Memorial and Remonstrance*: they have shaken the world's faith in the United States as a home for people suffering religious, ethnic, political, and other strife.

The day after the President signed the Original Executive Order, the United Nations High Commissioner for Refugees issued a statement recognizing that the United States' resettlement program "is one of the most important in the world" and expressing "hope that the U.S. will continue its strong leadership role and long tradition of protecting those who are fleeing

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[34] *See Engel*, 370 U.S. at 428-29 (citing, *inter alia*, SANFORD HOADLEY COBB, THE RISE OF RELIGIOUS LIBERTY IN AMERICA 74-115 (1902)).

[35] *See Reynolds v. United States*, 98 U.S. 145, 162-64 (1878).

conflict and persecution."[36] A few days later, the United Nations Secretary General declared that the United States had lost its standing as a leader in refugee resettlement, but he had "hope that the U.S. [would] be able to re-establish its very solid refugee protection in resettlement . . . ."[37] Lawmakers in Indonesia, home to the world's largest Muslim population, decried the Original Executive Order as an act that will "diminish the U.S. standing [sic] as a beacon for democracy."[38] German Chancellor Angela Merkel likewise remarked that banning travel based on nationality and blocking refugee admissions are "against the core idea of international aid for refugees and international cooperation."[39] The world views the executive orders as a retreat from America's

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[36] *Joint IOM-UNHCR Statement on President Trump's Refugee Order*, U.N. High Comm'r for Refugees (Jan. 28, 2017), www.unhcr.org/en-us/news/press/2017/1/588bc4e34/joint-iom-unhcr-statement-president-trumps-refugee-order.html.

[37] S. Sengupta, *U.N. Leader Says Trump Visa Bans 'Violate Our Basic Principles,'* N.Y. Times (Feb. 1, 2017), www.nytimes.com/2017/02/01/world/trump-immigration-ban-un.html.

[38] T. Salim, *RI Regrets Trump's Muslim Ban*, The Jakarta Post (Jan. 30, 2017), www.thejakartapost.com/news/2017/01/30/ri-regrets-trump-s-muslim-ban.html.

[39] A. Ansari, N. Robertson, & A. Dewan, *World leaders react to Trump's travel ban*, CNN (Jan. 30, 2017), www.cnn.com/2017/01/30/politics/trump-travel-ban-world-reaction.

traditional role as the leading safe haven for immigrants and refugees.

This Court has stayed in part the application of injunctions against the Executive Order entered by the Fourth and Ninth Circuits. [40] The Court's stay allows enforcement of the Executive Order with respect to "foreign nationals lacking a bona fide relationship with a person or entity in the United States."[41] The Court explained that exemption from the Executive Order required a "close familial relationship" or a relationship with an entity that is "formal, documented, and formed in the ordinary course."[42] The U.S. State Department quickly issued implementing guidelines to its agencies, defining "close familial relationship" and instructing agencies that "bona fide relationship" does not include a resettlement agency's "formal assurance for a refugee seeking admission."[43]

Plaintiffs in *Hawai'i v. Trump* promptly challenged the government's interpretation of this

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[40] *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436, 16-1540, 137 S. Ct. 2080 (June 26, 2017) (order granting in part and denying in part motion to stay injunction).

[41] *Id.*

[42] *Id.*

[43] *Information Regarding the U.S. Refugee Admissions Program, Fact Sheet*, Bureau of Population, Refugees, & Migration (June 30, 2017), https://www.state.gov/j/prm/releases/factsheets/2017/272316.htm.

Court's order.[44] The District Court of Hawai'i enjoined the implementing guidelines, concluding, *inter alia*, that "[a]n assurance from a United States refugee resettlement agency, in fact, meets each of the Supreme Court's touchstones: it is formal, it is a documented contract, . . . it is issued in the ordinary course, and historically has been for decades. Bona fide does not get any more bona fide than that."[45] The Ninth Circuit affirmed the district court's ruling and preliminary injunction, "considering the individualized screening process necessary to obtain a formal assurance and the concrete harms faced by a resettlement agency because of that refugee's exclusion."[46]

C. The Executive Order Impedes the Efforts of EMM And Other Religious Organizations to Render Aid to Refugees.

The Executive Order significantly undermines the efforts of religious organizations in the United States, including the Episcopal Church, to render aid to those fleeing war and oppression. For many Americans, this type of refugee-assistance work is an expression of their faith and one of the ways in which they keep their covenant with God.

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[44] *Hawai'i v. Trump*, No. 17-00050 DKW-KSC, 2017 WL 2989048, at *1 (D. Haw. July 13, 2017), *aff'd*, No. 17-16426, 2017 WL 3911055 (9th Cir. Sept. 7, 2017).

[45] *Id.* at *7.

[46] *Hawai'i v. Trump*, No. 17-16426, 2017 WL 3911055, at *10 (9th Cir. Sept. 7, 2017).

Through EMM, the Episcopal Church and its members provide a multitude of services to refugees, including coordinating the arrival of refugees to the United States, housing assistance, job training, providing for basic household needs, advocacy, language tutoring, business training, microenterprise loans, and a savings program to help refugees purchase homes, vehicles, education, or businesses. All of this has been "thrown into chaos" by the executive orders.[47]

As one of nine U.S. organizations working under federal contracts to resettle refugees, EMM will be directly affected by the outcome of these cases. On the day this Court narrowed the injunction, the Director of EMM, The Reverend Canon E. Mark Stevenson, issued a statement. Canon Stevenson reflected on the Court's determination that the "bona fide relationship" limitation "does not burden any American party . . . ."[48] The Canon wrote, "While that may or may not be true from a legal standpoint, it most certainly is not true from where this American, this Christian, sits and reflects. I feel the burden tremendously, as our country says to those who are

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[47] David Paulsen, *Olympia diocese welcomes refugees, sues to keep resettlement efforts alive* (Feb. 10, 2017), http://episcopaldigitalnetwork.com/ens/2017/02/10/olympia-diocese-welcomes-refugees-sues-to-keep-resettlement-efforts-alive.

[48] *See Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436, 16-1540, 137 S. Ct. 2080, 2088 (Aug. 10, 2017).

'other' that their suffering is less important than is mine."[49]

When the President signed the Original Executive Order, EMM had invested substantial resources in preparing to welcome hundreds of refugee families—including families from Syria, Iraq, and Somalia—into communities across the country. Because of the Church's efforts, these refugee families already had domestic arrangements supporting their arrival in the United States and were approved for travel. These families had their dreams dashed when they had to abruptly cancel their travel plans, and the Church's efforts to aid them have been for naught.

Although the second Executive Order did not bar entry for individuals in transit like the Original Executive Order did, EMM's work (and the work of other similarly situated religious organizations) has been devastated. The chaos surrounding the implementation of each executive order required EMM to expend additional, unanticipated resources. EMM staff worked around-the-clock to address the immediate needs of families in crisis, as their loved ones, so close to finding safety in the United States, became trapped in limbo overseas under threats of war and persecution. Many of EMM's resources

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[49] *A Statement by The Rev'd Canon E. Mark Stevenson* (June 26, 2017), https://episcopalmigrationministries.org/statement-episcopal-migration-ministries.

devoted to these refugee families over the past months have been wasted.

By the exclusion of a resettlement agency's formal assurance from the definition of "bona fide relationship," the Executive Order impacts each individual served by EMM. The dramatic reduction in the overall number of refugees allowed into the country under Sections 2(c) and 6(b) will not only rob families of hope and a future, it will also cost some their lives.

The Executive Orders have caused and will continue to cause significant harm to EMM and to the very vulnerable people that EMM serves. These refugees are fleeing persecution in their countries of origin, and because of the President's executive orders, they now face persecution in the safe haven they had been promised in the United States. The Executive Order has debilitated and will continue to debilitate the vital mission of EMM and other established religious organizations like it, and it will deprive Americans of the opportunity to practice their faith through service to others in need.

IV. CONCLUSION

The words inscribed on the base of the Statute of Liberty invite the world to give America its tired, its poor, its huddled masses yearning to breathe free. This idea—that victims of oppression around the world will find refuge on our shores—is enshrined in the Establishment Clause and is given life in part by religious organizations like the Episcopal Church, who actively work to welcome

refugees as an expression of their own faith. The Executive Order violates the letter and the spirit of the Establishment Clause. It deprives refugees of an opportunity to live free from oppression, and it deprives Americans of an opportunity to practice their faith through service.

The Bishops urge the Court to affirm the judgments of the Fourth and Ninth Circuit Courts of Appeals.

Respectfully Submitted,

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